

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**VIRNETX INC. AND
LEIDOS, INC.**

v.

APPLE INC.

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Civil Action No. 6:12-cv-855-RWS

Jury Trial Demanded

**JOINT NOTICE REGARDING MEET AND CONFER
AND AGREEMENT RELATING TO CERTAIN *MOTIONS IN LIMINE***

Pursuant to the Court’s September 1, 2020 Order (Dkt. No. 937) VirnetX, Inc. (“VirnetX”) and Apple Inc. (“Apple”) file this Joint Notice Regarding Meet And Confer and Agreement Relating To Certain *Motions In Limine*.

On September 8th, 2020, the parties met and conferred regarding VirnetX’s belief “that it is necessary to tell the jury VPN on Demand was found infringing over Apple’s objection,” and whether “Apple [could] rebut that point with evidence of its good-faith defenses.” (*Id.* at 11, n.2). The parties agree that they may state in front of the jury: (1) “it has been determined that VPN on Demand infringes” (*id.* at 10). According to the Court’s rulings, the parties agree that they will not reference that VPN on Demand was found infringing over Apple’s objections (*id.* at 11) nor will they reference that Apple had a good-faith belief in the non-infringement of VPN On Demand (*id.* at 6-7).

VirnetX and Apple also agree that they, their counsel, representatives, and all witnesses tendered by them (whether live or by deposition) will not mention, refer to, interrogate about, or attempt to convey to the jury in any manner, either directly or indirectly, any of the matters set forth below without obtaining a favorable ruling from this Court outside the presence and hearing

of the prospective jurors or the jury ultimately selected in this case. Both parties will also warn and caution each witness to follow the same instructions.

- Any reference to prior findings of willfulness, enhancement, or awards of attorney's fees in the -417 or -855 Actions. (Apple's Motion *In Limine* III) (Dkt. No. 895).
- Any reference that Apple, the witnesses, and the lawyers are from out of state. (Apple's Motion *In Limine* IV) (Dkt. No. 895).
- The parties will approach before referencing discovery disputes and any interactions of counsel related to the dispute, and before otherwise commenting that a party/lawyer from whom discovery was sought failed to exchange or share information. With respect to closing arguments, VirnetX will provide its closing slides, including any slides to be used on rebuttal, in a binder to Apple when VirnetX's lead counsel approaches the podium to begin closing argument. Apple will provide its closing slides in a binder to VirnetX when Apple's lead counsel approaches the podium to begin closing argument. To the extent a particular slide is not used in a party's closing, the other party may not use that slide. (Modification to Apple's Motion *In Limine* VI) (Dkt. No. 895).

Dated: September 8, 2020

/s/ Jason D. Cassady

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Respectfully submitted,

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ATTORNEYS FOR APPLE INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 8, 2020.

/s/ Jason D. Cassady
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